BIG TECH FIRMS IN FINANCIAL SERVICES SECTOR - AN OVERVIEW*

INTRODUCTION

Now a days Google providing Application Programming Interfaces (APIs), to allow its users to book Fixed Deposits (FDs) through Google Pay. Equitas Small Finance Bank (SFB) launched a unique fixed deposit scheme that can be booked through the Google Pay app in an instant, much like buying a shirt from an online marketplace. Consumers can book high-interest rate FDs fully digitally through the Google Pay app - without needing to open a savings account with Equitas Bank on its own Spot integrated with the Google Pay platform. On maturity, principal and interest of the FD go directly to the Google Pay user's existing bank account - which could be in any bank across the country.

Fintech is a combination of financial and technology. It is used to help companies, business owners and consumers to manage their financial operations, processes, and lives by utilizing specialized software and algorithms that are used on computers and, increasingly, smartphones.

Government demonetisation move gave a boost to the fintech ecosystem in India, especially in terms of supply chain. People of our country became aware about the cashless transactions during that period when cash was not available. The high speed mobile data and smartphones helped in digital transactions and more people began transacting digitally. That was the seed of the fintech ecosystem in India. Earlier people were not comfortable in online payments but after demonitisation they were bound to use other mode of transactions. Now digital mode of payments is famous not only in big cities even in rural India also. Many Indian startups emerged and provide the fintech services to the country but the major portion of the payment system in India is captured by the big tech firms.

Role of Big Tech Firms in Financial Sector

India has emerged as one of the biggest fintech hubs in the world as new-age companies leveraged technology to change the way people and businesses avail banking and financial services. Five information technology firm such as Google, Amazon, Facebook, Apple and Microsoft are together called Big Tech firms as they hold maximum market share in the world and their market capitalisation ranging between $1 trillion and $2 trillion, each. They offer a wide range of digital financial services like lending, analytics, customer onboarding, and security and have a substantial footprint in the payment systems. Some of the other digital financial services are crowdfunding, asset management, banking and insurance of several advanced and emerging market economies. The main focus of the tech giants is on digital payments market after online transactions surged amid the pandemic.

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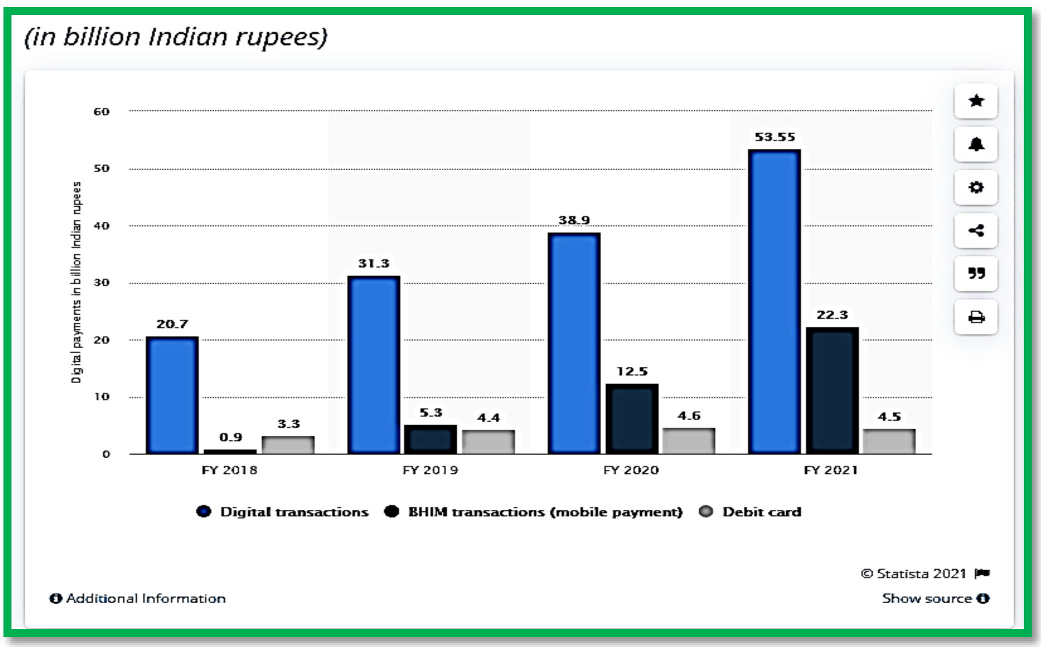
Benefits of Fintech for Customers

Total value of digital payments in India from financial year 2018 to 2021, by transaction type

Risks Associated with Fintech are:



Source: https://www.statista.com/statistics/1196776/india-digital-payments-by-transaction-type/

Fintech is beneficial for the banks as well as for customers. Still big techs present at least three unique challenges, which are as fellow:

(i) First, they straddle many different (non-financial) lines of business with sometimes opaque overarching governance structures.

(ii) Second, they have the potential to become dominant players in financial services.

(iii) Third, big techs are generally able to overcome limits to scale in financial services provision by exploiting network effects.

Global public debt rose to an all-time high as the pandemic-induced decline in government revenues and increased spending to support growth-oriented policies and other pandemic related measures led to a sharp increase in fiscal gaps.

Aggregate public and private debt for a sample of 61 countries rose by USD 24 trillion in 2020 alone making up over a quarter of the USD88 trillion rise over the past decade. The pandemic also took its toll on private sector and household indebtedness and the debt of the private non-financial sector stood at USD 214 trillion in 2020, up from USD 194 trillion in 2019.

Concerns & Steps Taken by The Reserve Bank of India

RBI's concerns have been intensified around a level playing field with banks, operational risk, too-big-to fail issues, challenges for antitrust rules, cyber security and data privacy. For central banks and financial regulators, financial stability objectives may be best pursued by blending activity and entity-based prudential regulation of big techs (an activity-based approach is already applied in areas such as Anti-Money Laundering (AML) /Combating the Financing of Terrorism (CFT). An activity-based approach is the provision of cloud services, where minimising operational and in particular, cyber risk is paramount. Furthermore, as the digital economy expands across borders, international coordination of rules and standards becomes more pressing.

Over the years, the Reserve Bank has taken several measures for improving customer service and grievance redress in banks. With increasing number of complaints received in the offices of the Banking Ombudsman, the need was felt to strengthen the existing mechanism. Accordingly, with effect from January 27, 2021 a comprehensive framework for dealing with customer grievances was implemented which comprises:

> The RBI emphasised that the best ways for financial regulators and global central banks to supervise these companies is by setting down an international standard based on coordination of rules.

(a) enhanced disclosures on customer complaints;

(b) monetary disincentive in the form of recovery of cost of redress of complaints from banks when maintainable complaints are comparatively high; and

(c) intensive review of the grievance redress mechanism and supervisory action against banks that fail to improve their redress mechanism in a time bound manner.

The cyber threat landscape for the financial system in India is continuously evolving, with new vulnerability exploits, attack vectors and threat groups emerging regularly. The year 2021 has so far seen attempts to target the payment ecosystem of the country by adopting multiple modus operandi, including the theft of payment card credentials and compromise of ATM infrastructure. In response, the Reserve Bank has issued advisories/alerts to mitigate their impact and is also working more intensively with supervised entities to strengthen their cyber security resilience.

The Computer Security Incident Response Team for the Financial Sector (CSIRT-Fin) under The

Indian Computer Emergency Response Team (CERTIn) issued various early warning threat intelligence alerts in near real time to enable mitigation of attacks by the financial sector organisations. CERT-In has on-boarded 158 financial sector organisations in the Cyber

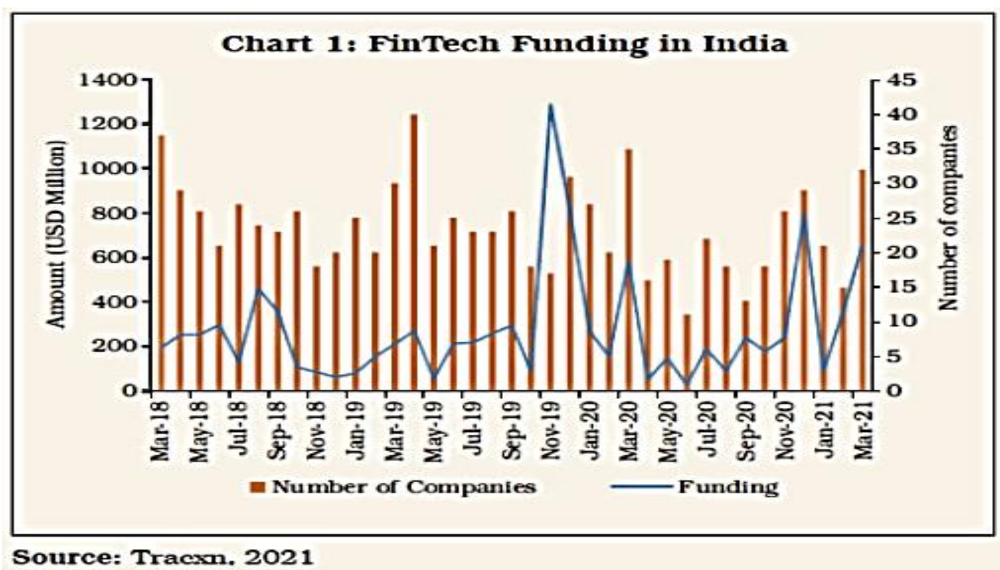
Swachhta Kendra to track vulnerable services and malware infections in their respective networks and has been conducting regular cyber security drills / exercises for capacity building.

e-Baat Programmes and Awareness Campaigns- The Reserve Bank has been conducting electronic Banking Awareness And Training (e-BAAT) programmes regularly for the benefit of cross-section of customers / bankers / students / public. The aim of these programmes was to educate the masses to move their focus of payments from physical presence of money to electronic money payments through various forms.

During July 2020-March 2021, 178 e-BAAT programmes were conducted by the regional offices.

LATEST TREND

The payment systems recorded a robust growth of 26.2 per cent in terms of volume during 2020-21 on top of the expansion of 44.2 per cent in the previous year. In terms of value, the contractionary trend which started in the previous year (-1.2 per cent) got further amplified and witnessed a drop of 13.4 per cent, mainly due to lower growth observed in the large value payment system, *viz.,* Real Time Gross Settlement (RTGS) system and decrease in transactions of paper based instruments. The decline in value of transactions in RTGS is largely attributable to the subdued economic activity. The share of digital transactions in the total volume of non-cash retail payments increased to 98.5 per cent during 2020- 21, up from 97.0 per cent in the previous year.



Source : https://rbi.org.in/scripts/AnnualReportPublications.aspx?Id=1322

Some of the Latest Products of Big Tech Firms

(i) Google has also tied up with small lenders for opening of time deposits. It already offers wealth management products such as digital gold, mutual funds on Google Pay.

(ii) Amazon.com also recently invested in fintech startup Smallcase Technologies, in what was its first investment in wealth management.

(iii) Facebook recently announced that it would roll out its small business loan programme that offers loans through a partner to firms that advertise on its platform. It said that

India would be the first country where it rolls out the programme. The loans offered would range from around $6,822 to $68,229 (Rs. 5-50 lakh approx). Interest rates of 17-20 per cent will be levied, potentially without collateral.

(iv) Xiaomi India also said that the company plans to offer loans, credit cards and insurance products in partnership with some of the country's biggest lenders and startup digital lenders.

CONCLUSION

With rapid progress of technology and advent of new developments and innovations in the payments ecosystem, the Reserve Bank of India has enhanced its focus on safety and security of payment systems in India. The Reserve Bank of India also continued its efforts to nurture efficiency, innovation, competition, customer protection and financial inclusion. Implementation of round-the-clock RTGS within a short timeline was a momentous milestone in this journey.

The fintech industry continues to expand at a rapid pace in wake of the COVID-19 pandemic. The fintech market in India was approximated at around Rs. 1,920.16 billion in 2019 and is expected to reach Rs. 6,207.41 billion by 2025, growing at a CAGR of 22.7 percent.

The National Payments Corporation of India (NPCI) which owns UPI in November 2020 had introduced a market share-capping rule for third party apps on UPI where no single company could have a volume exposure of greater than 30% in any given quarter from 2022.

Recently, South Korea's National Assembly approved the passage of its "Anti-Google Law" on 31 August. The legislation, named after Google but with a broader scope, will bar Alphabet company and Apple from compelling developers to adopt their in-app billing systems when developing apps for their two market-dominating app stores.

Government need to enact legislation to giving a level playing field to fintech firm for smooth operation in the country as well as provide protection to citizen in processing "sensitive personal data" such as financial data Keeping in view the trust, transparency, security breaches etc.

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SEBI (SHARE BASED EMPLOYEE BENEFITS AND SWEAT EQUITY) REGULATIONS, 2021 - A BRIEF ANALYSIS*

BACKGROUND

SEBI (Issue of Sweat Equity) Regulations, 2002 ("Sweat Equity Regulations") and SEBI (Share Based Employee Benefits) Regulations, 2014 ("SBEB Regulations") were notified on September 24, 2002 and October 28, 2014 respectively. The Sweat Equity regulations provided framework for issuance of Sweat Equity shares by listed companies and the SBEB Regulations provided framework to regulate Employee Stock Option Scheme, Employee Stock Purchase Scheme and other share based employee benefits.

Further, to improve ease of doing business from a regulatory perspective, it was observed that, both the SBEB Regulations and the Sweat Equity Regulations regulate employee benefits arising out of and relating with the equity shares of listed companies, thus the possibility of merging both such regulations may be explored.

Accordingly, the SEBI constituted the Expert Group to analyze the above proposals, and to provide its recommendations on the following:

- Revisiting the framework of SBEB regulations and suggesting policy change thereto
- Revisiting the framework of SEBI Sweat equity regulations vis-à-vis the Companies Act, 2013 and suggesting policy changes thereto
- Suggesting, whether it is advisable to combine both the regulations and if so, providing a draft of combined regulations

The changes in the two regulations and their merger into a single regulation were approved by SEBI in the Board Meeting held on August 06, 2021. Thereafter, the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 (herein referred as "New Regulations") have been notified and become effective on August 13, 2021. Pursuant to this, the SEBI (Share Based Employee Benefits) Regulations, 2014 and SEBI (Issue of Sweat Equity) Regulations, 2002 (herein referred as "Erstwhile Regulations") stand repealed.

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Key highlights of the changes under SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021

1. Definition of "employee" [Regulation 2(1)(i)]

As per the Erstwhile Regulations	As per the New Regulations
Employee Means a **permanent** employee of the company who has been working in India or outside India; or a director of the company, whether a whole time director or not but excluding an independent director; or an employee as defined in clause (i) or (ii) of a subsidiary, in India or outside India, or of a holding company of the company	Employee, except in relation to issue of sweat equity shares, means — an employee as designated by the company, who is exclusively working in India or outside India; or a director of the company, whether a whole-time director or not, **including a non-executive director who is not a promoter or member of the promoter group,** but excluding an independent director; or an employee as defined in sub-clauses (i) or (ii), **of a group company including subsidiary or its associate company,** in India or outside India, or of a holding company of the company

Rationale behind the Change
To include employees who are working on non-permanent basis like contractual employees, "gig workers" and employees on probation or deputation. To include clarification on inclusion of a non-executive director (who is not a promoter or member of the promoter group). In the erstwhile regulations, the employees of only holding and subsidiary companies were eligible for the grant of employee stock options or other employee benefits. Now, as per the new Regulations, the employees of group Companies as well as associate companies are also eligible for the grant of employee stock options or other employee benefits.

2. Definition of "Grant Date" [Regulation 2(1)(q)]

As per the Erstwhile Regulations	As per the New Regulations
"grant date" means the date on which the compensation committee approves the grant.	**"grant date" means the date on which the compensation committee approves the grant.** ***Explanation,* —For accounting purposes, the grant date will be determined in accordance with applicable accounting standards**

Rationale behind the Change
An explanation has been inserted to clarify that for the accounting purposes, grant date will be determined in accordance with applicable accounting standards.

3. Implementation of the Scheme through Trust [Regulation 3(1)]

As per the Erstwhile Regulations	As per the New Regulations
A company may implement schemes either directly or by setting up an irrevocable trust(s). Provided that if the scheme is to be implemented through a trust the same has to be decided upfront at the time of taking approval of the shareholders for setting up the schemes:	A company may implement a scheme either directly or by setting up an irrevocable trust. Provided that if the scheme is to be implemented through a trust, the same has to be decided upfront at the time of taking approval of the shareholders for setting up the scheme. **Provided further that if prevailing circumstances so warrant, the company may change the mode of implementation of the scheme subject to the condition that a fresh approval of the shareholders by a special resolution is obtained prior to implementing such a change and that such a change is not prejudicial to the interests of the employees.**
Rationale behind the Change	
Flexibility has been accorded to the companies to switch routes (from trust to direct route or vice versa), subject to the approval of the shareholders by special resolution, subject to the condition that such switch is not prejudicial to the interests of the employees.	

4. **Compensation Committee [Regulation 5(2)]**

As per the Erstwhile Regulations	As per the New Regulations
The compensation committee shall be a committee of such members of the board of directors of the company as provided under section 178 of the Companies Act, 2013, as amended or modified from time to time.	The compensation committee shall be a committee of such members of the Board of Directors of the company **as provided under regulation 19 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended from time to time:** **Provided that a company may also opt to designate its nomination and remuneration committee as the compensation committee for the purposes of these regulations.**
Rationale behind the Change	
Flexibility has been given to designate Nomination and Remuneration Committee (NRC) of a company as the Compensation Committee. Since a listed company is already required to have an NRC in terms of Regulation 19 of SEBI (LODR) Regulations. The requirements	

of constitution of the compensation committee can be made part of the NRC, without the requirement to set up a separate committee.

5. **Utilization of Fund/ Shares held by Trust in case of Winding Up of the Scheme [Regulation 8]**

As per the Erstwhile Regulations	As per the New Regulations
In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee.	In case of winding up of the schemes being implemented by a company, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees **or subject to approval of the shareholders, be transferred to another scheme under these regulations, as recommended by the compensation committee.**
Rationale behind the Change	
The assets of the trust are acquired and earmarked for the benefit of the employees of the company. If any surplus remains with the trust upon winding up, an option has been provided for deferring the utilisation of such funds or using it for the benefit of employees through a different scheme. Accordingly, transfer of shares or monies held by such trust upon winding up should be permitted to be transferred to one or more existing share-based employee benefit schemes, subject to approval of shareholders for such transfer.	

6. **Applicability of Minimum Vesting Period in case of Death/ Permanent Incapacity [Regulation 9(4)]**

As per the Erstwhile Regulations	As per the New Regulations
In the event of death of the employee while in employment, all the options, SAR or any other benefit granted to him under a scheme till such date shall vest in the legal heirs or nominees of the deceased employee.	In the event of death of the employee while in employment, all the options, SAR or any other benefit granted under a scheme **to him/her till his/her death shall vest, with effect from the date of his/her death,** in the legal heirs or nominees of the deceased employee, as the case may be.
Rationale behind the Change	
To have a more lenient view in the special circumstances of death or permanent incapacity, and permit vesting immediately in such circumstances.	

7. Certificate from Auditor [Regulation 13]

As per the Erstwhile Regulations	As per the New Regulations
In the case of every company that has passed a resolution for the schemes under these regulations, the board of directors shall at each annual general meeting place before the shareholders a certificate from the auditors of the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting.	In the case of every company which has passed a resolution for the scheme(s) under these regulations, the Board of Directors shall at each annual general meeting place before the shareholders a certificate from **the secretarial auditors of** the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting.
Rationale behind the Change	
There was no clarity in Erstwhile Regulations with regards to whether the certificate should be provided by the statutory auditor, internal auditor or secretarial auditor. Now, under the new Regulations, the audit certificate referred to under Regulation 13 should be procured from such secretarial auditor as **the secretarial auditor (being an independent practising company secretary)** is more conversant with these laws compared to other categories of persons and secretarial auditor is also required under Regulation 24A of the LODR Regulations, to furnish a secretarial audit report on an annual basis. The Institute of Company Secretaries of India (ICSI) has sent a specific request letter to the SEBI dated January 25, 2021, requesting the SEBI to authorise company secretaries in practice to provide the applicable certification under Regulation 13 of the SBEB Regulations.	

8. Objective/ Purpose for the Issue of Sweat Equity Shares [Regulation 30]

As per the Erstwhile Regulations	**As per the New Regulations**
A company whose equity shares are listed on a recognized stock exchange may issue sweat equity shares in accordance with Section 79A of Companies Act, 1956 and these Regulations to its– (a)Employees (b)Directors	A company whose equity shares are listed on a recognised stock exchange may issue sweat equity shares **in accordance with section 54 of the Companies Act, 2013 and these regulations to its employees for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.**

Rationale behind the Change
As the Erstwhile Regulations did not specify permissible purpose/objective for issuance of sweat equity shares, as are provided under the Companies (Share Capital and Debentures) Rules, 2014 (applicable only to unlisted companies). Since the purpose of issuance was not provided, the listed companies were not clear as to whether issuance of sweat equity shares was entirely discretionary or permitted only for certain purposes/objectives. Now, to streamline the same, the Objective/ purpose for the issue of sweat equity shares has been specified under the new Regulations.

9. Maximum quantum of Sweat Equity Shares [Regulation 31]

As per the Erstwhile Regulations	As per the New Regulations
	A company shall not issue sweat equity shares for more than fifteen percent of the existing paid-up equity share capital in a year: **Provided that the issuance of sweat equity shares in the company shall not exceed twenty five percent of the paid-up equity share capital of the company at any time:** **Provided further that a company listed on Innovators Growth Platform shall be permitted to issue not more than fifteen percent of the paid-up equity share capital in a financial year subject to overall limit not exceeding fifty percent of the paid-up equity share capital of the company, up to ten years from the date of its incorporation or registration.**
Rationale behind the Change	
The erstwhile Regulations did not specify a maximum limit on the quantum of sweat equity shares that may be issued by a company. This is provided under the Companies (Share Capital and Debentures) Rules, 2014 (applicable only to unlisted companies). In a view of the same, SEBI has specified the maximum limit upon the quantum of sweat equity shares that may be issued by a company.	

10. Lock In Period for Sweat Equity Shares [Regulation 38]

As per the Erstwhile Regulations	As per the New Regulations
The Sweat Equity shares shall be locked in for a period of three years from the date of allotment.	The sweat equity shares shall be locked in for **such period of time as specified in relation to a preferential issue under the SEBI (Issue of Capital and Disclosure Requirements)**

	Regulations, 2018, as amended from time to time.
Rationale behind the Change	
It was considered that the lock-in period of 3 years provided under the erstwhile Regulations which was having an adverse impact on the attractiveness of sweat equity shares. Therefore, the suitable changes with regards to the lock-in period have been made with a view that the lock-in period should be consistent with the lock-in period prescribed in relation to preferential issue under the ICDR Regulations. Therefore, the Lock-in period for the Sweat Equity shares shall be 3 years from the date of allotment of shares in case such shares are allotted to promoters or promoter groups. However, in case where the shares are issued to any person other than promoters and promoter group, the shares shall be locked in for a period of 1 year.	

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